NO. 21373

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LEO EDWIN BROMBERG,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLANT'S OPENING BRIEF

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

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Attorney for Appellant

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STATEMENT OF JURISDICTION

Pages 2 through 5 of the Transcript of Record indicate that on or about June 16, 1965 an Indictment was filed in the United States District Court for the Southern District of California, Central Division, charging the defendant and appellant with a violation of Title 26, United States Code, Section 7206(1), and with a violation in two counts of Title 18, United States Code, Section 287.

Said Transcript of Record indicates on page 52 that a Judgment was filed on February 28, 1966, finding the defendant guilty as charged.

Said Transcript of Record, on page 53, indicates that on February 28, 1966, following the denial of a motion for new trial,

for Judgment of Acquittal and for arrest of Judgment, the defendant was sentenced on Count 1 to one year; and on Count 2 to the payment of a fine in the amount of $500.00; and on Count 3 to a term of one year, to run concurrent with the time imposed on Count 1.

Said Transcript of Record indicates on page 54 that on February 28, 1966, a Notice of Appeal was filed by the defendant by and through his attorney, DEAN R. PIC'L.

The following references to the Transcript of Record clearly indicate that there is a final jurisdiction of a Court of the United States, in a criminal matter, from which an appeal may be prosecuted to this Court pursuant to Title 28, United States Code, Sections 1291 and 1294.

STATEMENT OF THE CASE

This is an appeal taken from a Judgment of Conviction heretofore rendered in the United States District Court for the Southern District of California, Central Division. The defendant has heretofore been convicted in three counts for violation of Title 26, United States Code, Section 7206(1), and for violations of Title 18, United States Code, Section 287, in two counts. Count 1, in essence, charges the defendant with having knowingly filed a false income tax return for the year 1959. Counts 2 and 3, in essence, charge the defendant with having knowingly filed false claims for refunds of income tax previously paid in the years 1957 and 1958, said claims for refund being based upon the net operating loss shown by the tax

return filed for the year 1959.

Succinctly stated, the evidence presented by the government, which the court found to be true, was to the effect that in computing the tax liability for the year 1959, the defendant, in substance, failed to include income in the amount of approximately $35,000.00, and took as a deduction the sum of approximately $42,000.00, to which he was not entitled. These two figures, totalling $77,000.00, produced, as the government contended, an error in that amount in the defendant's tax return. This alleged error created a net operating loss for the defendant for the year 1959, and, as a consequence, formed the basis for the requests for refund for the years 1957 and 1958. It was the position of the government that the net operating loss was in error, and, as a consequence, the claims for refund for the two preceding years were likewise in error, and that all of this conduct was participated in by the defendant with knowledge of the facts and without a belief in the truth of the tax return filed for the year 1959 and the claims for refund filed for the years 1959 and 1958, and, as a consequence, establish the guilt of the defendant in all three counts.

More fully stated, it was the position of the government that in March of 1959 the defendant, as President of Volume Industries, Inc., a California Corporation, acquired for the sum of $15,000.00 a television film series known as "The Little Rascals". The evidence presented indicated that the defendant sold that television series for the approximate sum of $50,000.00, resulting in a gross profit of approximately $35,000.00. The government contends, as

set forth on page 12 of the Transcript of Record, being a portion of the government's trial memorandum, that following a discount of certain notes received as evidence of said $35,000.00, a net profit was realized by the defendant in the amount of $29,999.92. The evidence presented by the government was to the effect that no portion of this $29,999.92 appeared on the defendant's tax return as income.

Relative to the deduction in the amount of $42,000.00, it was the contention of the government, as set forth in pages 13 and 14 of the Transcript of Record in a portion of the government's trial memorandum, that the sum of $50,050.00 had been deposited in a bank by one GEORGE S. WILSON, a resident of Bakersfield, California. The evidence was uncontradicted to the effect that the defendant made efforts to recover said $50,050.00 from Cuba following the Castro take-over in that country, and the freezing of all deposits of non-Nationals in the Banco Continental Cubano. It was conceded that the sum of approximately $8,050.00 was expended by the defendant in an effort to recover said sum, and that the balance in the amount of $42,000.00 was, in fact, lost and not accessible to either the original depositor, GEORGE S. WILSON, or the defendant. It was the position of the government that a loss of $42,000.00 had in fact occurred, but that the loss was deductible to said GEORGE S. WILSON and not to the defendant, LEO EDWIN BROMBERG.

Succinctly stated, it was the position of the defendant, as substantiated by the testimony, that the transaction concerning the

"Little Rascals" was set forth in his books and records, but was, by error, not included in the tax return by his accountant, and because of varying personal problems occurring at the time, the defendant signed the 1959 tax return with the belief that it was a complete and accurate representation of his financial transactions and would, perforce, have included the transaction relative to the "Little Rascals". With reference to the $42,000.00 deduction, occasioned by the loss in Cuba, it was the position of the defendant that said GEORGE S. WILSON, a client of the defendant who was, at the time of the occurrences herein, an Attorney at Law, licensed to practice in the State of California, had been induced to deposit said money upon the advice and counsel of the defendant, and that the eventual loss of the total sum of $42,000.00 was occasioned by the failure of the defendant, as the attorney for said GEORGE S. WILSON, to discount said sum when an opportunity to do so had presented itself. As a consequence of these facts, the defendant felt personally obligated to said GEORGE S. WILSON for said sum and promised to repay said sum to his client. There was further evidence introduced at the time of trial that a statement was rendered to the defendant by said GEORGE S. WILSON which tended to corroborate and substantiate what the defendant contended was an agreement between himself and said GEORGE S. WILSON as to the defendant's liability for said sum.

Upon the basis of the evidence presented at the time of trial, it was the final and ultimate position of the defendant that the tax return filed for the year 1959 was, in the opinion of the defendant

at the time he filed said tax return, true and accurate to his own knowledge and belief. It was further the position of the defendant, in light of this opinion and belief relative to the tax return filed in 1959, that the claims for refund for the years 1957 and 1958 were equally valid, flowing as they did as a normal and natural consequence of the net operating loss shown in the year 1959.

In addition to the items hereinabove set forth, there was a contention upon the part of the government that the defendant had an additional $3,000.00 of unreported income received from one HENRY VENTURA. This position of the government is set forth on page 11 of the Transcript of Record. No discussion will be made relative to this item as the court found that that contention of the government was not supported by the evidence.

ISSUES PRESENTED

I. THE DECISION OF THE COURT WAS NOT SUPPORTED BY THE EVIDENCE.

II. THE EVIDENCE WAS INSUFFICIENT TO ESTABLISH THAT THE DEFENDANT'S TAX RETURN FOR THE YEAR 1959 WAS IN ERROR.

III. THE EVIDENCE WAS INSUFFICIENT TO ESTABLISH THAT THE CLAIMS FOR REFUND, FILED FOR THE YEARS 1957 AND 1958, WERE IN ERROR.

IV. THE EVIDENCE WAS INSUFFICIENT TO ESTABLISH THAT THE ERROR, IF ANY, IN THE TAX RETURN FOR

THE YEAR 1959, AND THE CLAIMS FOR REFUND FOR THE YEARS 1957 AND 1958, WERE KNOWINGLY MADE BY THE DEFENDANT.

V. THE COURT ERRED IN EXCLUDING EVIDENCE AS TO THE DEFENDANT'S INCOME AND EXPENSES FOR YEARS BOTH PRIOR AND SUBSEQUENT TO 1959.

SPECIFICATION OF ERRORS

I. THE COURT ERRED IN FINDING THE EVIDENCE SUFFICIENT TO SUPPORT CONVICTION.

II. THE COURT ERRED IN FINDING THE EVIDENCE SUFFICIENT TO SUBSTANTIATE THE CONTENTION THAT DEFENDANT'S TAX RETURN FOR THE YEAR 1959 WAS IN ERROR.

III. THE COURT ERRED IN FINDING THAT THE EVIDENCE WAS SUFFICIENT TO DEMONSTRATE THAT THE CLAIMS FOR REFUND FILED IN THE YEARS 1957 AND 1958 WERE IN ERROR.

IV. THE COURT ERRED IN FINDING THE EVIDENCE WAS SUFFICIENT TO SATISFY THE SCIENTER REQUIREMENT AS TO EACH COUNT IN THE INDICTMENT.

V. THE COURT ERRED IN EXCLUDING EVIDENCE AS TO THE DEFENDANT'S INCOME AND EXPENSES AS TO YEARS PRIOR AND SUBSEQUENT TO 1959.

In regard to the above Specification of Errors, the attention

of the Court is respectfully directed to Volume 4 of the Reporter's Transcript, pages 606 through 609. Therein the defendant made an offer of proof which, if accepted by the court, would have substantiated the contention of the defendant that at the time of the filing of the tax return for the year 1959 and the claims for refund for the years 1957 and 1958, the actual losses which he had sustained during the preceding four years, clearly demonstrated his right to the refunds which were received for the years 1957 and 1958, and would further serve to negate any finding of knowledge on his part as to falsity of the 1959 return and the claims for refund for 1957 and 1958.

ARGUMENT

I

THE DECISION OF THE COURT WAS NOT SUPPORTED BY THE EVIDENCE.

This issue raises the ultimate question which is presented by this appeal. In essence, the determination of this issue requires a consideration of the entire record, both the exhibits and the oral testimony presented. It is advanced to the Court as the initial issue because it is the one of prime importance and upon which the case should ultimately turn. Counsel for the appellant, in advancing this issue, well recognizes that its final determination rests upon the position which the Court takes relative to the four subsequent issues to be discussed in this Opening Brief. In the presentation of

appellant's argument on this initial issue, counsel for the appellant hereby incorporates by reference, as though fully set forth herein, those arguments and authorities which shall be presented to the Court in the discussion of the subsequent issues. All of those subsequent issues, together, serve to substantiate the validity of appellant's position on this first and crucial issue.

II

THE EVIDENCE WAS INSUFFICIENT TO ESTABLISH THAT THE DEFENDANT'S TAX RETURN FOR THE YEAR 1959 WAS IN ERROR.

The crucial question, presented in consideration of this issue, is whether or not the defendant was entitled to the net operating loss for the year 1959, as shown on the tax return which he filed for that year. This, in turn, depends upon whether or not his income for the year had been understated in the amount of approximately $35,000.00, and, secondly, whether or not he was entitled to a deduction in the amount of $42,000.00.

With reference to the first of these questions, the attention of the Court is respectfully directed to the testimony of MR. ROBERT M. ABELS, the accountant and employee of the Internal Revenue Department, who was called by the government in the presentation of their case in chief. The testimony of MR. ABELS commences on page 380 of Volume 3 of the Reporter's Transcript. Said testimony concludes, on page 503 of that volume. Certain references will be made to specific portions of that testimony with

the contention of counsel for the appellant that those specific portions to which reference is made, adequately reflect the entire tenor of the witness' whole testimony which would be evidenced upon a reading of it in its entirety.

On page 383, commencing at line 18, MR. ABELS testified that the general condition of the books for the year 1959, was incomplete. The testimony of MR. ABELS, as contained on pages 412 through 415, clearly demonstrates an attempt on his part, in substantiating the government's case, to take the highest figure of income, be it shown on the books or the tax return, and the lowest figure of expenses, be they those shown on the books or the tax return, and chose to ignore the true computation of income and expenses as demonstrated by all of the evidence which was available to him. In making his original computations, MR. ABELS indicated, as set forth in Volume 3, page 466, lines 2 through 6 of the Reporter's Transcript, that no reference whatsoever was made in the books of MR. BROMBERG as to the funds received for the sale of "The Little Rascals" television program, and yet, in the testimony which followed the above lines, Account 201 clearly indicated the receipt of those funds. Since the receipt had been indicated upon the books, it is submitted to the Court that the greal gravamen of this issue is demonstrated in the testimony of the defendant's own accountant, BERNARD LEBE. MR. LEBE testified, in Volume 4 of the Reporter's Transcript, lines 2 and 3 on page 531, that for the years 1956 through 1959 he was the accountant for the defendant and appellant. Page 533, lines 5 through 6, MR. LEBE testified that

he prepared the tax returns for the defendant in the years 1956 through 1958, and in lines 7 and 8 he indicated that he prepared that return for the year 1959. He further testified on page 534, lines 4 through 6, that the books were available to him at the time of the preparation of the return. He further testified, lines 20 through 24, that the books had been neglected and were not full and complete at the time of the preparation of the tax return. Commencing on page 542, at line 20, through line 2 on page 543, the witness LEBE clearly demonstrated that he had no explanation of why it was that the books showed business expenses in the amount of $109,000.00, and he took only a deduction of $95,000.00 on the tax return.

On page 543, lines 3 through 9, the witness testified that he didn't even look at one of the accounts which was set forth in the books.

The exact condition of the books is perhaps best demonstrated by MR. LEBE'S testimony on page 544, lines 12 through 13, of the Reporter's Transcript, when the question was put:

"Q. In the vernacular the books were in a mess?

"A. Correct."

On page 546 of the Reporter's Transcript, commencing at line 5 through line 10, the witness LEBE indicated that he had the assistance of his son, who had passed the CPA exam, in preparing the return, and that he wanted to do it in a hurried fashion to conclude the job.

From these specific items of testimony, as well as the entirety of the testimony of this witness, it is apparent from the books and records available to him, a rather hurried job was performed to prepare a tax return without any great degree of confidence as to whether or not that tax return, as ultimately prepared, really conformed with the books and records which were made available to him. This return then, after having been prepared, was submitted to the defendant for his signature. Putting together the entire testimony of both accountants, MR. ABELS, called on behalf of the PEOPLE, and MR. LEBE, called on behalf of the defendant, clearly indicates that the books adequately reflected the total income received by the defendant, including the $35,000.00 gross profit on "The Little Rascals" transaction, but, because of sloppy accounting procedures, did not appear in the tax return which was filed.

This position is further substantiated by a consideration of the testimony of MELVIN SINGER, whose direct testimony commences on page 595 of Volume 4 of the Reporter's Transcript and continues over into Volume 5 of said Transcript. MR. SINGER testified as to what the defendant's tax liability and true financial affairs were for the year 1959, as a result of a reconstruction of all of the defendant's financial transactions for the years 1956, through the period in question, as well as subsequent years. The essence of the testimony of MR. SINGER, as set forth, essentially, in pages 720 through 724, is to the effect that, considering sum total of all of the years in question, there was no error on the defendant's 1959 return which resulted in any loss to the government, and further,

based upon a consideration of all of this evidence, the defendant was entitled to the refunds which he received for the years 1957 and 1958.

When the testimony of the defendant, when he took the stand, is added to the testimony heretofore discussed, it is submitted to the Court that there was ample evidence to substantiate the contention of appellant that the income shown on the defendant's return for the year 1959, was an accurate reflection of his total income for that year.

The validity of the $42,000.00 deduction, relative to the Cuba transaction, necessitates initially the consideration of the testimony of GEORGE S. WILSON. MR. WILSON testified in Volume 2, page 204, lines 14 through 20, that the deposit in Cuba had been made at the request of MR. BROMBERG. On page 205, lines 18 through 21, MR. WILSON testified that he was willing to enter into this transaction if there would be no personal liability to him as a result of his participation. Page 216, lines 23 through 24, MR. WILSON testified that at one point in time MR. BROMBERG had received the $50,000.00 out of the bank in Cuba in the form of both cash and cashiers' checks. Page 217, lines 19 through 23, MR. WILSON testified that he had the utmost confidence in MR. BROMBERG and believed that MR. BROMBERG was going to make every effort to obtain the money and that upon obtaining it, it would be remitted to MR. WILSON. Needless to say, on page 218, lines 17 through 19, and subsequent testimony, MR. WILSON indicated that he considered the money to be his, which, it is submitted to the Court, was natural testimony upon his part since he had already

taken a deduction on his own tax return for that loss.

Of equal significance is the testimony of MR. WILSON on page 233, with reference to Defendant's Exhibit D, which was a letter from MR. WILSON's accountants to MR. BROMBERG setting forth the belief of the accountants as to an indebtedness from MR. BROMBERG to MR. WILSON for a transaction with one BRADY, which were the parties involved in the Cuba transaction of almost the exact sum of money which had been lost in the Cuba transaction, and it is significant that MR. WILSON is unable to explain what could be the possible basis of that claimed indebtedness since there were no other transactions involving WILSON, BRADY and BROMBERG except the Schenley distributorship in Cuba.

On page 238 of the Reporter's Transcript, commencing at lines 15 through 21, is evidence that MR. BROMBERG discussed with MR. WILSON the fact that he carried malpractice insurance and that he had missed the opportunity to discount the cashiers' checks in Miami, Florida. This testimony, it is submitted, clearly indicates a state of mind wherein the defendant considered the loss to be one which had been occasioned by his conduct and one which would give rise to a cause of action in MR. WILSON against him for that loss, and entitle him to a deduction for it. Further substantiation relative to the Cuban loss is contained in the testimony of MARJORIE RUBIN on page 293 of Volume 2 of the Reporter's Transcript, in lines 3 through 6, wherein MRS. RUBIN testified that in a conversation with the defendant, it was the position of the defendant that MRS. RUBIN had lost the money for him, meaning

the defendant, LEO BROMBERG. It is further apparent from the cross-examination of MRS. RUBIN that the defendant paid certain sums of money on account of MRS. RUBIN as compensation for what she contended was her inconvenience in the Cuban transaction. This is set forth in the Reporter's Transcript, Volume 2, page 304, lines 10 through 22.

In the testimony of MRS. RUBIN on page 306 of Volume 2, at lines 9 through 11, it was clear that MR. WILSON felt no obligation on his part to that witness for the inconvenience. On page 311, upon being told of the inconvenience and her desire for compensation, MR. WILSON laughed, and, finally, on page 313 of the Reporter's Transcript, lines 18 through 24, the witness admitted that on December 18, 1962, in an affidavit, she had indicated that GEORGE WILSON had told her that he had made repeated demands upon LEO BROMBERG for the return of the money deposited in Cuba as a proposed investment, and that LEO BROMBERG had ignored said requests. As a consequence of all of this testimony, it is submitted that the circumstances were such that the loss was, in fact, that of the defendant LEO EDWIN BROMBERG, and he was entitled to the deduction which he took.

These two subissues, then, i.e., that the income reflected in the 1959 tax return was an accurate reflection of the defendant's income for that year, and, secondly, that he was entitled to the deduction for the sum of $42,000.00, serve, it is submitted, to substantiate the first issue presented by this appeal that the evidence was insufficient to establish that the defendant's tax return for the

year 1959 was in error.

III

THE EVIDENCE WAS INSUFFICIENT TO DEMONSTRATE THAT THE CLAIMS FOR REFUND FOR THE YEARS 1957 AND 1958 WERE IN ERROR.

The substantiation of this issue is inherent in the very nature of a claim for refund. If a tax return, filed for a given year, is correct and accurate, and it shows a net operating loss, there is no question as to the validity of a claim for refund or the right of an individual to make such a claim. Counsel for the appellant hereby incorporates by reference as though fully set forth herein, the argument presented relative to the immediately preceding issue, in substantiation of the contention that the evidence was insufficient to demonstrate that the claims for refund for the years 1957 and 1958 were in error.

IV

THE EVIDENCE WAS INSUFFICIENT TO SHOW THAT ANY ERROR IN THE DEFENDANT'S TAX RETURN FOR THE YEAR 1959 OR IN THE CLAIMS FOR REFUND FOR 1957 AND 1958 WERE KNOWINGLY MADE.

The presentation of this issue requires, initially, a consideration of the mens rea requisite to a conviction of the counts charged against the defendant in this case. The attention of the Court is respectfully directed to the discourse between Court and

Trial Counsel set forth in Volume 5 of the Reporter's Transcript, commencing on page 702 and continuing through page 708. The attention of the Court is also respectfully directed to the Trial Memorandum filed by the defendant on March 28, 1966, which commences in the Transcript of Record on page 33. Said Trial Memorandum is incorporated herein by reference as though fully set forth herein.

The court, in essence, took the position that Count 1, charging the violation of Title 26, Section 7206(1), was not, in essence, a fraud section, and as a consequence did not have a scienter requirement, but that Counts 2 and 3 for violations of Section 287 of Title 18 of the United States Code, did sound in fraud and did have a scienter requirement.

It is submitted that if anything, the converse is true. How can it be contended that one who files a tax return without any knowledge that it is false, be guilty of fraud if he requests from the government a refund to which that tax return would normally entitle him? The very words of Section 7206(1) of Title 26, United States Code, using as they do the terms "wilfully" and the phrase "and which he does not believe to be true", clearly substantiate the necessity of adequate proof of scienter of the nature involved in any fraud prosecution. The testimony heretofore discussed as to the nature of the defendant's books, the fact that they did include reference to all of the transactions in which he had been involved, the testimony relative to the Cuban transaction, coupled with the testimony of the defendant himself as set forth in the Transcript as

to the personal problems with which he was beset at the time of the filing of the return, clearly serve to negate any scienter on his part as to the falsity of the 1959 return. The failure of the prosecution to bear the burden of proof on the scienter issue, relative to Count 1, is fatal not only to that Count, but to the two subsequent counts as well, by virtue of the fact that they depend entirely upon the falsity of the 1959 tax return. Further substantiation relative to this issue is presented by a consideration of the final issue to be discussed hereafter concerning the error of the court in refusing to permit the introduction of evidence which would have served to further negate any knowledge upon the part of the defendant as to the falsity of the 1959 tax return, as well as the claims for refund for the years 1957 and 1958. The argument to be presented relative to that issue is incorporated herein by reference as though fully set forth.

The sum total of all of the evidence contained in the Reporter's Transcript indicates that at the time of the filing of 1959 tax return and the claims for refund, the defendant sincerely believed that the loss which he had sustained for the year 1959 was at least as great as that demonstrated in that return and, as a consequence, he was entitled to refund from the government for the years 1957 and 1958 in an amount equal, at least, to the amount requested in those claims.

Therefore, it is respectfully submitted that the evidence was insufficient to show that any error in the 1959 tax return or the claims for refund for the years 1957 and 1958 were knowingly made by the defendant.

V

THE COURT ERRED IN EXCLUDING EVIDENCE AS TO THE DEFENDANT'S INCOME AND EXPENSE AS TO PRIOR AND SUBSEQUENT YEARS.

The attention of the Court is respectfully directed to the testimony in the Reporter's Transcript on pages 606 through 609, wherein certain testimony was offered by the defendant which was rejected by the court. The Trial Memorandum submitted by the defendant on January 28, 1966, to which reference has heretofore been made, page 33 of the Transcript of Record, also relates to the offer of this evidence. It is the position of the defendant and appellant that any evidence which would serve to negate the knowledge of the error in the 1959 return, and which would substantiate his good faith belief in his entitlement to the claims for refund filed in the years 1957 and 1958, should have been admitted by the court for the probative effect which it would have upon this crucial element in a fraud prosecution. All of such evidence was rejected.

As indicated in the portion of the Transcript to which reference has been made, this evidence would have indicated that a correct computation of the defendant's income and expenses up to the date upon which he signed the 1959 tax return, which were matters presumably within his knowledge at that time, were more than sufficient to indicate a net operating loss even greater than that shown in the 1959 return even if one overlooked the items questioned by the governement, and further indicated that he was entitled, at least, to the refunds which he obtained for the years 1957 and 1958,

based upon that recomputation.

Numerous cases have substantiated the position relative to the requisite knowledge of the defendant for a prosecution under Title 26, United States Code, Section 7206(1) (Gunn v. C.I.R., 247 F.2d 359; Knowles v. United States, 224 F.2d 168; Cosgrove v. United States, 224 F.2d 146; see cases cited in Trial Memorandum commencing on page 33 of Transcript of Record).

The court, without benefit of this evidence, was not in a position to correctly evaluate the state of mind of the defendant at the time of the signing of the 1959 return and the filing of the claims for refund, and, therefore, did not have before it crucial evidence relative to one of the important issues involved in the prosecution.

It is therefore respectfully submitted that the court erred in rejecting evidence as to the defendant's income and expenses during prior and subsequent years.

CONCLUSION

Obviously, this case is an important one, not only to the government, charged as they are with the vigorous enforcement of the law, but to the defendant and appellant as well, who, as an attorney, endures not only the stigma of conviction and the penalty imposed, but suffers, as well, the suspension of his license to practice law. The full and complete extent of the total punishment which the defendant bears as a result of these convictions is alone sufficient to require the Court to give extreme consideration to the

issues presented for determination by this appeal. The consequence of an affirmance or a reversal are far from minimal. Upon the basis of all of the arguments heretofore presented, a consideration of the Trial Memoranda filed by all counsel, and the testimony presented by all of the witnesses, it is respectfully submitted that the convictions heretofore entered against the defendant should be reversed.

Respectfully submitted,

DEAN R. PIC'L

Attorney for Appellant

CERTIFICATE

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

/s/ Dean R. Pic'l

DEAN R. PIC'L

Attorney for Appellant